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FILED

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Commission on
Judicial Performance

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING FORMER)	VERIFIED ANSWER
JUDGE LUIS CARDENAS,)	
No. 155.)	
_____)	

Respondent Luis Cardenas (hereafter, "Respondent" or "Judge Cardenas"), a judge of the Orange County Municipal Court from March 30, 1976 to January 12, 1980, and a judge of the Orange County Superior Court from January 12, 1980 to March 31, 1996, and thereafter a retired judge sitting on assignment in Orange County Superior Court until December 31, 1996, hereby files his Verified Answer to the Notice of Formal Proceedings (hereafter, "Notice") brought by the Commission on Judicial Performance.

Except as herein expressly admitted, Judge Cardenas denies each and every allegation in the Formal Notice, and specifically denies that he engaged in willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and improper action and dereliction of duty within the meaning of Article VI, section 18 of the California Constitution.

COUNT ONE

The Notice alleges that Judge Cardenas took judicial action in twenty-three

criminal cases involving defendants represented by attorneys Leonard Basinger (hereafter, "Basinger") and/or Ginger Larson Kelley (hereafter, "Kelley"), with whom he is alleged to have had a social relationship and personal friendship. Judge Cardenas is alleged to have been a friend of Basinger for more than 20 years, to have testified as Basinger's witness at his disbarment and reinstatement hearings in 1987 and 1991, to have vacationed (with his spouse) with Basinger and his wife in Europe in 1993 and 1995, to have presided at Kelley's wedding, and to have advised Kelley as she began her legal career. According to the Notice of Formal Proceedings, every judicial action Judge Cardenas took in the twenty-three cases was favorable to the clients of Basinger and/or Kelley.

Judge Cardenas admits he had a social relationship with Basinger and considered him a friend, and to a far lesser degree enjoyed a cordial relationship with Kelley. The same is true of many, many attorneys who appeared before Judge Cardenas over the years. Judge Cardenas met Basinger in the 1970s when both were young attorneys in the Orange County District Attorney's Office. The Orange County legal community at the outset of Judge Cardenas's career was a friendly and collegial environment, particularly in the District Attorney's Office. Basinger and Judge Cardenas, however, were not close friends in the District Attorney's Office, but, rather, friendly acquaintances.

After Basinger left the District Attorney's Office, however, he and Judge Cardenas did not see each other for a considerable period of time. When Judge Cardenas testified for Mr. Basinger in 1987 and 1991, he had not socialized with him for at least ten years, and only encountered him once or twice in a public setting. Neither Basinger nor Kelley has ever dined at Judge Cardenas's home. While Judge Cardenas has been to Basinger's and Kelley's homes to attend parties, he and his wife have never visited either the Basinger home or the Kelley alone in non-group situations, for dinner or for any other purpose.

When Judge Cardenas performed Kelley's wedding in 1993, the member of the

couple he knew best was the bridegroom, Deputy Public Defender William G. Kelley. Judge Cardenas generally performs between twelve and twenty-four weddings per year, and these occasionally involve Orange County judges and lawyers. It was thus not unusual when, in 1993, he presided over the official marriage between Ginger and William Kelley in Orange County. He also agreed to preside at their ceremonial marriage in England (where Judge Cardenas had, of course, no jurisdiction), and he and his wife paid their own way; they were planning a European vacation in any event. Immediately after the wedding, Judge Cardenas and his wife traveled in Europe without either Basinger or Kelley.

In conjunction with Roman History classes he teaches at California State University, Fullerton, Judge Cardenas regularly leads antiquities tours to Europe (he has done so for the past 10 years). These tour groups range in size from eight to thirty-five. In 1995, Basinger asked if he and his wife could be included in a group tour scheduled to travel to Greece and Italy. Judge Cardenas told him they could, so long as they paid their own way. It is thus simply not the case that Judge Cardenas and his wife "vacationed with" Basinger and his wife in Europe in 1993 and 1995, if this is supposed to mean that they were *alone* together during these periods.

Judge Cardenas did not disqualify himself from cases in which Basinger or Kelley appeared, and did not ask for waivers from opposing parties. There was nothing improper in this. Judge Cardenas has close and longstanding personal friendships with *many* of the lawyers appearing before him. Particularly when Judge Cardenas was the master calendar judge on felony matters (as he was for the entire County of Orange from 1981 to 1983, and the entire West Orange County jurisdiction during the years before his retirement), it would have been impracticable for him to disqualify himself or ask for waivers from opposing parties whenever an attorney with whom he had a friendship appeared before him. Presiding over a busy master criminal calendar would be all but impossible for a judge required to disqualify himself or engage in detailed disclosures

every time a friend or someone with whom he socialized appeared in his court, and none of the judges who have occupied that position has ever done so, to Judge Cardenas's knowledge. Further, Judge Cardenas denies ever trying to hide his relationship with Basinger and/or Kelley from any party. Orange County is an intimate enough legal community that practitioners are usually aware of social relationships among judges and attorneys.

The Public Defender's Office assigned Deputy Public Defender Holly Zebari, the sister of Judge Cardenas's wife, to his courtroom at West Court (Department 73) in the 1980s. Because of the nature of this particular relationship, and out of an abundance of caution, Judge Cardenas asked Ms. Zebari as an officer of the court to tell every single opposing counsel that he was married to her sister. No deputy district attorney, or any other lawyer, ever stated he or she felt uncomfortable with Ms. Zebari's practicing in Judge Cardenas's courtroom – other than Ms. Zebari, who complained he was "tougher" on her clients in trying to prove he was not biased in her favor. Neither Basinger nor Kelley enjoyed a relationship with Judge Cardenas that required similar disclosure.

Judge Cardenas does not have sufficient information to be able to list the total number of cases before him involving defendants represented by either Basinger or Kelley, who were both active and busy attorneys. He admits to having taken judicial action in the twenty cases listed in Count One of the Notice. Judge Cardenas denies the allegation that every judicial action he took in those cases (or the three involving defendants represented by Basinger or Kelley after Judge Cardenas retired and began sitting on assignment) was favorable to the clients of Basinger and/or Kelley, and further alleges that on other occasions he took actions unfavorable to the clients of Basinger and/or Kelley, as was required by the circumstances of each case. With respect to the specific allegations, Judge Cardenas admits and denies the following.

A. ORDERING PRE-ARRAIGNMENT O.R.s

Judge Cardenas generally denies the allegation that his conduct in these cases

violated the Code of Judicial Conduct (in effect until January 15, 1996) canons 1, 2, 2A, 2B, and 3E. The Commission's allegations appear to be based upon a fundamental misunderstanding of how the Orange County Detention Release Unit (Detention/Release) functions.

Detention/Release was established in the 1970s by the Central Municipal Court, which was inundated by in-custody misdemeanants (most of them unrepresented at the pre-arraignment stage) who would have qualified for "O.R." releases had a judge reviewed their bail status. The Central Court judges hired non-attorney Detention Release Officers (DROs) to screen prisoners and release the obvious O.R. candidates on the authority of the presiding judge. A form and signature stamp were created for this purpose.

Detention/Release worked so well that soon the other branch courts asked to use it, too, although the Central Municipal Court, with the main jail in its jurisdiction, administered the program for all. Bail amounts and O.R. releases to any court continued to bear the signature of the Central Municipal Court presiding judge. (This was Judge James Brooks in several of the matters referenced by the Commission here.)

Additionally, before Detention/Release was founded, judges were contacted off-hours on a "catch as catch can" basis by attorneys seeking to have clients released from custody, police officers and prosecutors requesting search or arrest warrants, or parties in need of emergency restraining orders. This led inevitably to inequities in judicial workloads: the most friendly and accessible judges found their private time under constant siege, while the disagreeable ones or those who lived in remote parts of the county were seldom contacted. The burden fell especially heavily on past or present criminal calendar judges, as they were familiar with the types of issues being raised and were well known to the lawyers. There were also times no judge was available or the attorneys were unable to reach one for lack of a judge's home telephone number.

Accordingly, to spread the work more evenly among the judges and insure

availability, an on-call magistrate program was set up to work in conjunction with Detention/Release. A designated judge, equipped with a pager, is on call for one week, 24 hours per day. The job is rotated among all the judges in the county, whatever their assignments, with the end result that a judge can expect to serve once every year or two. Private counsel seeking an O.R. release or lowered bail can either contact the duty judge through Detention/Release, or contact any other judge, who will then generally call Detention/Release for information about the detainee and make a decision. The same is true of police and prosecutors: they can either contact the duty judge through Detention/Release, or call a different judge directly and have that person issue the search warrant.

There are many valid reasons why a defense attorney, police officer or prosecutor might telephone someone other than the on-call magistrate. A defense attorney might know that the on-call judge has civil experience only, and for that reason is reluctant ever to overrule a DRO's decision. She may know that a particular on-call magistrate always sets high bail on a particular type of case, while a different judge does not. Detention/Release may have its answering machine on for a considerable period and the attorney might be unable to get through. A police officer may need a search warrant immediately and know a particular judge lives within blocks of the police department, while the on-call magistrate lives at the other end of the county. (Judge Cardenas, who lives very near the Huntington Beach Police Department and was an extraordinarily experienced criminal calendar and trial judge, was called by that department's detectives on a regular basis when he was not the duty judge, and always did his best to assist them.) Likewise, a prosecutor may not wish to have an inexperienced judge or someone with only family law expertise review a search warrant in a potential death penalty case or a complex narcotics operation, for fear of jeopardizing the case later on.

On less serious matters, often no judge is ever contacted, as the DRO simply releases the arrestee upon the attorney's representation he or she has been retained. (All

the relevant time frames here were before court consolidation; the "default judge" whose name appeared on the release was the presiding judge of the Central Municipal Court, as explained above.) If the DRO declines to release the defendant on his own authority, he will, at the attorney's request, telephone the on-call magistrate for judicial review. Still other times, the attorney obtains the pertinent information from the DRO and then telephones a judge (other than the duty judge) directly.

On pre-arraignment bail matters, attorneys in Orange County have routinely used these procedures for years, and until this Accusation, no one has ever considered it improper to telephone someone other than the duty judge for bail reviews or search warrants. Furthermore, the Commission has some of its facts wrong: for example, according to the Commission, "[s]ince 1990, Judge James Brooks was the on-call judge assigned to Detention/Release; Detention/Release referred matters requiring judicial review to him." As explained above, this is completely incorrect, as on-call duty rotates weekly among all the judges of the county. The Commission is also incorrect when it alleges that in some of the cases addressed below, Judge Brooks reviewed the matter, set bail, and was then essentially overruled by Judge Cardenas. In fact, Judge Brooks's name merely appears on the releases (as it did on every release form issued by the DRO while Judge Brooks was the Presiding Judge) but there is no indication he ever personally reviewed the cases.

With respect to pre-arraignment bail matters, Judge Cardenas's habit and custom -- from which he never deviated -- was the following. He called Detention/Release and stated he wanted a complete background check on the arrestee. He specifically asked the Detention/Release officer whether the individual had a criminal record, any pending cases, or any outstanding warrants. He also asked the officer whether he had a police report, what he knew about the case, what police officers recommended, and what the Detention/Release officer himself recommended. That is, Judge Cardenas always actively elicited feedback from Detention/Release -- and did not simply call up and order

defendants released on O.R. willy-nilly.

In the eleven "pre-arraignment O.R." cases listed in the Notice, Judge Cardenas proceeded in a manner consistent with his habit and custom. In ten of those cases, Basinger and/or Kelley contacted him directly and requested that he order the O.R. release of the client. No impropriety was committed in these cases. They were not assigned to any judicial officer at that time and any judge in the county was free to act upon such a request. Judge Cardenas alleges that he never granted bail reductions or O.R. releases without first calling the on-duty Detention/Release Officer to gain as much information as possible and to have the valuable input of its staff. In light of this feedback, Judge Cardenas concluded that the arrestee (who had not yet been arraigned) was not a danger, posed little or no risk of failing to appear in court, and was suitable for O.R. release.

The remaining case, involving Paula Kay Wilson, involved absolutely no improper conduct by Judge Cardenas. In fact, Ms. Wilson's case *had been assigned to Judge Cardenas for almost two years before the O.R. order*. The allegation that Ms. Wilson's case was not assigned to Judge Cardenas is thus simply false.

1. Sally Kay Annette

Judge Cardenas lacks sufficient information to be able to say definitively whether he contacted Detention/Release, or whether he was contacted by Detention/Release on this matter. He admits that, at the request of Basinger, he ordered the O.R. release of Ms. Annette (case 94CF0102) on January 19, 1995. He further admits, upon information and belief, that Kelley later appeared as attorney for Ms. Annette. Judge Cardenas denies the allegation, however, that *Judge Brooks* had previously authorized bail in the amount of \$50,000. He alleges, upon information and belief, that *the non-judicial personnel of Detention/Release* set the bail amount. Judge Cardenas further alleges there was nothing improper in issuing an O.R. order pre-arraignment.

2. Kiet Hao Lam

Judge Cardenas is informed and believes Mr. Lam was arrested on a warrant from the State of Texas on June 4, 1994, and the bond for the warrant was \$50,000. On or around June 6, 1994, Kelley informed Judge Cardenas that Texas authorities had worked out a deal with her, and she intended to fly to Texas with Mr. Lam in order to surrender him there voluntarily. After Judge Cardenas verified this information on June 6, 1994, he contacted Detention/Release and ordered Mr. Lam released on O.R. Mr. Lam promised to appear on June 7, 1994, and in fact appeared with Kelley in Department 5 of the Superior Court before Judge Michael Brenner. Mr. Lam promised to turn himself in to Texas authorities, and Kelley said she would take the defendant back to Texas. Judge Brenner, who of course had the power to revoke the O.R., "was in agreement with this arrangement," and no fugitive case was filed by the State of California. On June 14, 1994, the Orange County Sheriff received notification (by "telctype") from the Harris County Sheriff's Office (in Houston, Texas) that Lam appeared in Texas court on June 14, 1994, "received deferred adjudication," and was "no longer wanted." (Obviously, the very disposition given indicates the underlying conduct was not at all serious in the eyes of the Texas court.)

There was nothing improper about Judge Cardenas' action in this case. Apart from the fact that Judge Brenner agreed with and independently "blessed" the procedures, Judge Cardenas is informed and believes Orange County Sheriff's Investigator Osterville told Orange County District Attorney investigators that, however unusual, the process was *not* illegal. Its main advantage was saving the California and Texas taxpayers a substantial amount of money by requiring a defendant to pay his own way to Texas -- rather than being escorted in-custody by law enforcement authorities -- to face a non-serious case that his counsel correctly believed could be easily settled.

3. Linda Murguia

On October 24, 1994, at the request of Kelley, Judge Cardenas contacted Detention/Release and ordered an O.R. release for Ms. Murguia; the latter was wanted on

assault charges *and had not yet been arrested*. Kelley told Judge Cardenas she had a client she wished to surrender to the police pursuant to an agreement she had with the detective on the case. Following his habit and custom, Respondent contacted Detention/Release to do a complete background check on Ms. Murguia. Judge Cardenas does not remember whether he personally called the detective, or had Detention/Release call him. It was a common occurrence to have a lawyer ask for a judge's assistance in surrendering a client to police, and there is nothing improper in providing assistance to law enforcement in this sort of matter. Upon information and belief, Judge Cardenas alleges Ms. Murguia went to the police department as agreed and the matter was handled to everyone's satisfaction

4. Darren Scott Bailey

Upon information and belief, Judge Cardenas admits that Mr. Bailey was arrested on December 22, 1994; he lacks sufficient information to be able to admit or deny that the arrest was for driving under the influence. Judge Cardenas is informed and believes Mr. Bailey had three outstanding warrants, two from Riverside County (one of which was a "no bail" warrant) and one a \$10,000 Orange County warrant for violation of Penal Code section 270. At 12:23 a.m. on December 23, 1993, at the request of Basinger, Judge Cardenas alleges he ordered Mr. Bailey released O.R. on all of his pending cases *for which he could be released O.R.*

Judge Cardenas alleges that he had no authority to vacate an out-of-county no-bail warrant hold. In such a situation, Judge Cardenas' habit and custom was to tell an attorney requesting an O.R. release that as to *other* pending matters, he could contact Detention/Release and look into whether the arrested individual could be released on O.R. or have his or her bail reduced. Typically, the attorney would have told Judge Cardenas that the no-bail hold would soon be released; any O.R. order issued by Judge Cardenas would thus at best amount to pre-arranging what would happen if the bail hold was lifted. (An attorney would not make this request without being very sure the other jurisdiction

was about to lift the no-bail hold, lest the defendant remain in custody anyway but lose all the pre-trial "credit for time served" he would otherwise accrue on the cases now carrying an O.R. release.)

While Judge Cardenas does not remember the details of this case, he alleges that he could only have ordered the O.R. release of Mr. Bailey as to those pending matters for which such a release was possible – and not as to the no-bail warrant. He further alleges that he would only have ordered an O.R. release after evaluating all the information provided by Detention/Release and determining that it was probable the defendant would make his appearances and resolve his matters.

5. Marcia E. Smith

Upon information and belief, Judge Cardenas admits that Ms. Smith was arrested and booked in case 9513901 on March 22, 1995. He denies the allegation she was arrested on a charge of possession of a controlled substance *for sale*. He alleges, rather, that Ms. Smith was arrested on a charge of simple possession of a controlled substance (in violation of Health & Safety Code § 11377). At the request of Basinger, Judge Cardenas contacted Detention/Release on March 22, 1995, and ordered Ms. Smith released O.R. Judge Cardenas alleges he would not have released Ms. Smith without contacting Detention/Release, obtaining as much information as possible, and then acting accordingly. In fact, the Central Orange County Municipal Court Detention Release Unit Investigative Report expressly states that Judge Cardenas "called and requested a O.R. recommendation for the" defendant, *since she had I.D. had local ties, and had no priors*. O.R.s are routine in simple possession cases where these factors are present, and it is difficult to imagine any Orange County judge's ruling differently. (In fact, such defendants are statutorily eligible for dismissal after deferred entry of judgment.)

6. Kimberly Stanley

Upon information and belief, Judge Cardenas admits that Ms. Stanley was arrested on three traffic warrants (257875, 267617, 269959) on March 31, 1995, with a total bail

of \$1398. Judge Cardenas contacted Detention/Release at the request of Basinger, and ordered Ms. Stanley released on O.R. on the warrants. This was a traffic matter that Detention/Release evaluated as "low risk," and it was entirely proper to order Ms. Stanley released O.R. Generally, a defendant on traffic warrants who has retained an attorney is extremely likely to appear in court and resolve the matters.

7. Brett Telford

Judge Cardenas lacks sufficient information to be able to say whether Mr. Telford was arrested for a violation of Penal Code section 273.5 on May 20, 1995 (case no. 956182), or whether bail was set at the scheduled amount of \$10,000. He also lacks sufficient information to be able to say whether he contacted Detention/Release at Basinger's request on Sunday, May 21, 1995, or whether he ordered Mr. Telford released on O.R. without a hearing in open court with two-day written notice to the prosecutor.

Although Judge Cardenas has been provided no discovery in this matter, and has no independent recollection of Mr. Telford, he alleges that the charged conduct was not improper. Prior to 1995, Penal Code section 1270.1 required such a hearing only in the case of persons arrested for violent felonies. In 1994, the Legislature amended Penal Code section 1270.1 to add persons arrested for a violation of Penal Code sections 262, 273.5, or 646.9, or paragraph (1) of subdivision (e) of Penal Code section 243. When the Legislature amended the law, judges endured a period of uncertainty regarding what to do about O.R. release requests in these types of cases. Some of Judge Cardenas's colleagues took the position that it was unconstitutional to limit a judge's power to release a suspect on charges stated in the police report – particularly as charges often were not filed, or were filed as lesser offenses by the filing deputy district attorney.

It was a Detention/Release officer himself who first told Judge Cardenas on a domestic violence matter that he was getting a variety of orders from different judges in the county: while some followed the statute, other did not. During this transition period, Judge Cardenas's policy was to have Detention/Release investigate each case and call

him back so an evaluation could be made to protect the safety of the alleged victim. As time went on, Judge Cardenas concluded that no O.R. releases in domestic violence cases should be granted (even if the victim requested the release of his or her spouse) until the appellate courts ruled on the new statute's constitutionality. Mr. Telford's case would have fallen squarely within this transitional period, when many judges were unsure of the viability of newly amended section 1270.1.

8. Henry Calderon

Judge Cardenas lacks sufficient information to be able to say whether Mr. Calderon was arrested for a violation of Penal Code section 273.5 on May 31, 1995 (case no. 959806), or whether bail was set at \$50,000. He also lacks sufficient information to be able to say whether he contacted Detention/Release at Kelley's request on May 31, 1995, or whether he ordered Mr. Calderon released on O.R. without a hearing in open court with two-day written notice to the prosecutor. Although Judge Cardenas has been provided no discovery in this matter, and has no independent recollection of Mr. Calderon, he alleges that the charged conduct was not improper: as with Mr. Telford, Mr. Calderon's case would have fallen squarely within the transitional period when many judges were unsure of the constitutionality of newly amended section 1270.1.

9. Paula Kay Wilson

In this case, the Commission has ignored the very long and detailed history of Ms. Wilson's tenure in Judge Cardenas' courtroom. The Notice is *simply incorrect* in alleging both that this case was "pre-arraignment" and in alleging that Judge Cardenas was not assigned the case. In fact, Judge Cardenas had Ms. Wilson's case from *September of 1993* -- well before the O.R. release order of June 19, 1995. The history of the case is as follows.

On September 2, 1993, Ms. Wilson was indicted on numerous counts alleging methamphetamine possession. Joseph Smith was the deputy district attorney assigned the case. Arraignment was set for September 9, 1993. On that date, Judge Brenner in

Department 5 continued the arraignment until September 10, 1993. On September 10, 1993, Kelley appeared as Ms. Wilson's attorney, and Deputy District Attorney Smith represented the People. Trial setting conference was set for September 17, 1993, in *Department 73* in West Court -- and Ms. Wilson's case was assigned to *Judge Cardenas*.

On October 1, 1993, Ms. Wilson entered a guilty plea before Judge Cardenas (with the Tahl form signed by Kelley and initialed by Mr. Smith). The Tahl form stated that if Ms. Wilson surrendered to lawful custody on or before November 16, 1993, the court would sentence her to 5 years state prison; if she failed to appear, or committed another crime, she agreed to be sentenced in absentia to 10 years state prison. Dr. Paul Blair, M.D., was appointed by Judge Cardenas to examine the defendant. Mr. Smith and Kelley appeared at this proceeding.

On November 16, 1993, sentencing was continued, and Ms. Wilson was released on O.R. Mr. Smith appeared for the People, and Kelley appeared for the defendant. Sentencing was again continued on January 13, 1994, and the O.R. release remained. Sentencing was continued on several more occasions, the O.R. release remained, and both the People and the defendant were represented at all times in the proceedings. Following these numerous continuances, Ms. Wilson was finally sentenced in early January of 1995 to five years of state prison, execution suspended. She was placed on probation on the condition she serve 75 days in the Orange County Jail, with credit for 75 days served. Deputy District Attorney Jeff Ferguson represented the People, and Kelley represented the defendant.

On March 1, 1995, Ms. Wilson was apparently arrested. On March 7, 1995, a probation violation petition was filed. Arraignment on the probation violation was set in Department 5, before Judge David O. Carter. The hearing was initially scheduled for March 9, 1995, but was continued. On March 17, 1995, Judge Carter apparently assigned the case to *Department 73* -- to *Judge Cardenas*.

In all proceedings before Judge Cardenas, either Deputy District Attorney

Ferguson or Deputy District Attorney Dennis Conway appeared. On May 18, 1995, the probation violation hearing was continued until July 24, 1995, and Ms. Wilson was released on O.R. Deputy District Attorney Ferguson appeared at this hearing, as did Kelley.

Ms. Wilson submitted urine samples on May 24, June 7, and June 14; these tested positive for amphetamines. Judge Cardenas is informed and believes that she was arrested on a *second* probation violation as a result – and the O.R. order alleged by the Commission to constitute misconduct occurred in connection with this arrest. Otherwise put, Judge Cardenas is alleged to have ordered the O.R. release of Ms. Wilson on June 19, 1995, *when the matter was already before him*.

Prior to the order in question, Kelley called Judge Cardenas and told him Deputy District Attorney Ferguson agreed to an O.R. release. After tentatively issuing the order, Judge Cardenas recalls asking his clerk to contact Mr. Ferguson to confirm Kelley's representation about his agreement. Judge Cardenas spoke to Mr. Ferguson that same day. Upon learning that Mr. Ferguson did not agree to any O.R. release, *he immediately rescinded the O.R. order*.

When the arraignment on the second probation violation petition occurred in Department 5 on June 28, 1995, Judge David McEachen (apparently filling in for Judge Carter) assigned the second probation violation to *Judge Cardenas* in Department 73. On August 29, 1995, Kelley and attorney James McCone filed a Petition for Writ of Error Coram Nobis in Department 73. The petition referred to *in camera* proceedings held in Judge Cardenas's chambers on March 23, 1995; Deputy District Attorney Joseph Smith, Kelley, and Basinger appeared, and the court reporter transcribed the proceedings.

According to the transcript (attached to the petition as an exhibit), Kelley had alleged at Ms. Wilson's sentencing hearing that the Fountain Valley Police Department (FVPD) had broadcast to the community that Ms. Wilson was a "snitch." Attorney Joanne Harrold, who represented a "drug dealer" allegedly told by a FVPD officer that

Ms. Wilson was a "snitch," testified to this effect. Kelley also alleged Ms. Wilson and her mother had been receiving numerous death threats as a result of the police misconduct.

Both Deputy District Attorney Smith and Deputy District Attorney Ferguson repeatedly denied that any member of the FVPD had made such a statement – as did the Costa Mesa police. On March 9, 1995, however, Sergeant Sorrell of FVPD informed Deputy District Attorney Smith that an inexperienced officer, Sarah Logan, *had in fact told a drug dealer that Ms. Wilson had "snitched."* Deputy District Attorney Smith immediately sought to inform Judge Cardenas of this, and the *in camera* proceedings were held.

Although the transcript of the proceedings was sealed, as noted above, it was attached to the petition for writ of error coram nobis as an exhibit. According to the transcript, Deputy District Attorney Smith immediately tried to get in touch with Kelley. He was unable to, because she was in Oklahoma. When he could not reach Kelley, Mr. Smith made an *ex parte* representation to Judge Cardenas in order to ensure that matters with Ms. Wilson be "frozen" until he could advise Kelley and the court of what he knew.

Judge Cardenas then stated, "I'll confirm that you did come to see me and that at first, *I was a little concerned 'cause Mrs. Kelley wasn't here and I didn't want to do anything ex parte, but you assured me it was all right.*" [R.T.3/23/95 8; emphasis supplied.] Deputy District Attorney Smith replied, "My feeling was it was actually helpful to Ms. Kelley, and that's why I felt it was important to go forward and at least let the court be aware of that." [R.T.3/23/95. 8]

On August 29, 1995, a hearing re further proceedings was set for October 6, 1995, probation was reinstated on the same terms and additional conditions, and the petition for writ of error coram nobis was taken off calendar without prejudice. Ms. Wilson was remanded to custody. On October 6, 1995, a hearing re further proceedings was set for January 22, 1996, and Ms. Wilson was released on O.R. When sentencing was held

February 23, 1996, Judge Cardenas revoked and terminated probation and sentenced Ms. Wilson to prison in case no. 95WF0471.

In sum, Ms. Wilson's matters were pending for a period of years and involved two deputy district attorneys. Many laborious hours were spent on this complex and difficult matter involving the defendant's activities as a police informant and the bizarre complications that arose from her undercover work. Nothing was done concerning Ms. Wilson without the full knowledge and cooperation of both prosecutors. Many long sessions, including the above *in camera* proceedings (on the record) were held to protect everyone. When there was any "miscommunication" between the D.A. and defense counsel, Judge Cardenas's services were requested and the matter was resolved either by a joint conference in his chambers or by phone.

It should speak volumes to the Commission that Judge Cardenas telephoned Deputy District Attorney Ferguson and immediately rescinded his order upon learning that Mr. Ferguson had not previously agreed to the conditions as represented by defense counsel. It was in Judge Cardenas's power to let the order stand, but he had an agreement with both Mr. Smith and Mr. Ferguson that any dispute would be resolved in favor of the prosecution until a full hearing could be had to sort the matter out. When the case concluded, Judge Cardenas sentenced Ms. Wilson to prison -- *over defense counsel's objections*. Nothing in this case demonstrates any impropriety by Judge Cardenas in these proceedings.

10. Jeffrey Alan Love

Judge Cardenas is informed and believes Mr. Love was arrested for possession of a controlled substance (case no. 95NF1884), and bail was set at \$10,000. On August 1, 1995, at the request of Kelley, Judge Cardenas contacted Detention/Release and ordered that Mr. Love be released on O.R. While Judge Cardenas does not remember the details of Mr. Love's case, he alleges that no defendant was released without an investigation and recommendation of Detention/Release. Prior record, failures to appear (if any) and

ties to the community would all be explored before a decision was made. Further, on Health & Safety Code section 11378 and 11377 charges, there are no pre-arraignment bars to a judge's considering an O.R. request. There was therefore nothing improper in this order.

11. Patrick Arabaca

Judge Cardenas is informed and believes Mr. Arabaca was arrested for violation of Penal Code section 496(a) (receiving stolen property; case no. 96SM18436) on December 13, 1995. He lacks sufficient information to be able to admit or deny that bail was set at \$10,000, although he believes this was the statutory "default bail" for the charge at the time. On December 14, 1995, at the request of Basinger, Judge Cardenas contacted Detention/Release and ordered that Arabaca be released on O.R. Upon information and belief, Judge Cardenas alleges Arabaca appeared in court all dates on which he was scheduled to appear. Judge Cardenas further alleges that on April 25, 1996, the parties agreed the case would be dismissed after six months if there were no new violations. (This is an indication the prosecutor considered the case trivial or non-provable.) On October 8, 1996, the case was dismissed. There was nothing improper in this order.

B. ORDERING PRE-ARRAIGNMENT BAIL REDUCTION

Judge Cardenas generally denies that the pre-arraignment bail reduction contained in the allegations constitutes conduct that violates the Code of Judicial Ethics, canons 1, 2, 2A, 2B(1), and 3E. He further alleges he proceeded consistent with his habit and custom, by procuring a complete background check from Detention/Release. In fact, based on this information Judge Cardenas decided the arrested individual was *not* an appropriate candidate for an O.R. release.

1. Stephen Bass

Judge Cardenas lacks sufficient information to be able to admit or deny that Mr. Bass was arrested for possession of a controlled substance for sale on March 1, 1996 (case no. 96SF0246), or to admit or deny that bail was set at \$25,000. Basinger called

Judge Cardenas, then vacationing in Hawaii, to request that Mr. Bass be released on O.R. Judge Cardenas contacted Detention/Release and elicited information concerning Mr. Bass. Repeated long distance phone calls to Detention/Release were needed to obtain the information required to make a sound decision on proper bail. Based on the comments of Detention/Release, Judge Cardenas *did not order an O.R. release* (as Basinger had requested). Rather, Judge Cardenas ordered that Bass's bail be reduced to \$5,000.

C. ORDERING BAIL REDUCTION AND O.R. RELEASES AFTER ARRAIGNMENT

After graduating from law school, Judge Cardenas began his legal career working for the Los Angeles County District Attorney in 1969 and 1970. He then became a deputy with the Orange County District Attorney, where he worked from 1970 to 1976. He was a Juvenile Court Commissioner for one month in 1976 before being appointed a judge of the Orange County Municipal Court in 1976. He was elevated to the Superior Court in 1980.

Prior to his elevation, Judge Cardenas was a young deputy district attorney surrounded by judges from the "old school." He learned by watching how these seasoned veterans handled their calendars and granted O.R. releases. Such judges as the Honorable Lloyd Verry and Calvin Schmidt took no proprietary interest in cases, resolving to pitch in and handle whatever needed to be done to enhance the efficiency of the courts. Moreover, lawyers (including district attorneys and defense lawyers) went to judges with whom they felt comfortable, independent of who the official "duty judge" was in any given court.

In sum, Judge Cardenas matured in an atmosphere in which lawyers recognized the bench had a considerable amount of authority. He was forced to apply and refine these lessons when he was assigned to Department 5 in 1981 -- the master criminal calendar court in Orange County. (He was also advisor to the Grand Jury.)

Judge Cardenas sat in Department 5 in 1981, 1982, and 1983: the one-year

assignment was twice renewed by the presiding judge of the Superior Court. Contrary to the flavor of the allegations that he was somehow defense-oriented, Judge Cardenas was extremely popular both with the prosecution and the defense. He was regarded as fair, reasonable, patient, courteous and hard-working, and was one of the most respected judges ever to occupy that assignment. At the time, Department 5 was the clearing-house for *all* felony cases pending trial and all pending probation violations in the entire County of Orange.

When Judge Cardenas began his career and until the early 1990s (when various efforts to de-centralize were made), all felonies in Orange County were initially filed in municipal court. Defendants held to answer were remanded to Department 5 of the Superior Court. One criminal master calendar judge arraigned felony defendants from all five municipal courts in Orange County, reviewed the facts of each case, and attempted to negotiate settlements. Cases that could not be settled were assigned to trial departments. Additionally, the Department 5 judge heard all felony probation violations, writ applications from municipal courts, and restoration of sanity petitions from state hospitals. It was absolutely critical that Department 5 be occupied by a respected, experienced, even-handed and hard-working judge with a knack for settling cases and handling a huge calendar. Historically, without a good Department 5 judge the entire superior court calendar was vulnerable, as trial courts would begin to clog up with criminal cases, spill over, and commandeer resources from civil litigants over whom they had priority.

Department 5 handled literally hundreds of cases per week. Most of the defendants were in custody and a substantial number required interpreters. Merely processing the caseload required a crew of four to five clerks. It is an understatement to term Department 5 a "pressure-cooker": Judge Cardenas handled between *100* and *150* cases *a day*, along with writs, bail and O.R. requests. On a typical day, Judge Cardenas called the morning calendar, and then spent the balance of the day in chambers

negotiating dispositions, continuing cases, assigning matters out to the trial courts, and negotiating probation violations. Some of the negotiations involved "package deals" in which a defendant's various cases from throughout the county, including misdemeanors, probation violations and even traffic tickets, were assembled in Department 5 for a global settlement. (Some of these files were, of course, pending before other judges at the time Judge Cardenas settled them as a group, generally without notice to the other judges, who were only too happy to benefit from the reduced caseload and efficient calendar management.)

It was essential that the entire calendar be concluded by the end of the day: if Judge Cardenas did not finish by 5 p.m., the domino effect on the next days' calendar, as well as jail resources, would be severe. An enormous amount of money in overtime would be wasted, for example, if the bus transporting incarcerated individuals did not depart court by 5 p.m. and return to the Orange County Jail.

All judges assigned to Department 5 simply *must* maximize efficiency in order to handle the tremendous caseload, and Judge Cardenas developed a system to achieve this. A strict, formal approach *had to be jettisoned* in order to meet the challenge: while the rights of the parties were never sacrificed, doing everything "by the book" had to be. For example, if all bail requests were litigated via noticed, formal hearings with live witnesses and presentations according to the rules of evidence, the operation would have ground to a halt within a day. Instead, Judge Cardenas made quick bail decisions after all the parties had been heard informally, in chambers, and usually (unless the case was exceptionally serious) with no court reporter's record of the proceedings. Of course, Judge Cardenas relied on the defense attorneys and prosecutors to "shoot straight" with him and not misrepresent the true state of affairs; and by and by and large they were quite honest. (There was a tremendous disincentive to make misrepresentations, as the attorney's credibility would suffer and with it, the ability to achieve quick, informal resolutions.)

These streamlined procedures were absolutely essential to avoid the system's becoming completely paralyzed (a result which would have cost taxpayers millions of dollars at a time trial court funding was diminishing). Nor did the efficiencies Judge Cardenas developed for handling the master criminal calendar cease to be useful after he left Department 5. In 1984, Judge Cardenas had a general trial calendar in Superior Court, handling a mixture of civil and criminal cases. In 1985, he was transferred to a courtroom located in the Orange County Municipal Court, West Judicial District ("West Court") in 1985, where he sat as a Superior Court Judge in Department 73 until his retirement 11 years later. Judge Cardenas sat as Presiding Judge of West Court Operations for all 11 eleven years, handling both civil and criminal cases (although toward the very end, the cases were almost exclusively criminal).

Department 73 evolved into a "mini-Department 5." As the only Superior Court judge in West Court, Judge Cardenas agreed to preside over *two* calendars. First was his own trial calendar, involving some 40 to 60 pending felony cases. Second, he presided over a preliminary hearing calendar, which he agreed to hear despite the enormous increase in workload, in an attempt to help the municipal court judges clear their jammed calendars. All lawyers who had felonies in West Municipal Court pending preliminary hearing would place their cases on second call and come to Judge Cardenas first to try to negotiate a settlement. The District Attorney assigned to Department 73 *was always present*.

In short, *all felonies in West Court were funneled through Judge Cardenas*. As in Department 5, strict formality had to be sacrificed in favor of efficiency for the court to function smoothly. When bail requests came to him in Department 73, as before in Department 5, Judge Cardenas made decisions quickly after informal consultations with the parties. Usually no court reporter was present. Physically, as many lawyers as could cram into chambers at any one time were usually present for case discussions; as attorneys left chambers to wait in the courtroom for their matters to be called, new ones

entered chambers to take the seats of the just departed. There was often standing room only and a line outside the door. The department was crowded, pressured, and hectic, yet Judge Cardenas remained calm and friendly to the parties and their attorneys.

Against this background, Judge Cardenas generally denies the allegation that his conduct in the following 6 cases violated the Code of Judicial Conduct (in effect until January 15, 1996), canons 1, 2, 2A, 2B, 3(B)(2), 3(B)7, and 3E, and the Code of Judicial Ethics (in effect since January 15, 1996), canons 1, 2, 2A, 2B(1), 2B(2), 3B(2), 3B(7), and 3E.

1. Andrea Jane Rambo

Judge Cardenas is informed and believes Ms. Rambo pleaded guilty to four felony Penal Code violations in 93CF0996 before Judge Gary Ryan on April 14, 1993. Bail was set at \$10,000 and she was ordered to appear April 23, 1993. On April 23 Judge Ryan revoked probation and issued a bench warrant (for failure to appear) in the amount of \$50,000. Ms. Rambo later appeared before Judge Richard Stanford on May 28 and June 9, and bail remained at \$50,000. On June 9, 1993, Ginger Larson substituted in as attorney of record, and announced she would file a formal motion to withdraw the plea and vacate the sentence. On July 7, 1993, Judge William Evans heard Ms. Rambo's motion to reduce bail from \$50,000; following an in camera hearing, he denied the motion and bail remained at \$50,000.

Judge Cardenas admits that Kelley made an ex parte request to release Ms. Rambo on O.R. On July 15, 1993, Judge Cardenas ordered the release of Ms. Rambo from custody on O.R. "to her attorney Ginger Larson, only." The Detention/Release Investigative Report states that defendant was ordered released to her attorney, Ginger Larson, "*for purpose of putting [her] into a drug program.*" Judge Cardenas admits that the District Attorney's Office was not given notice of the request. He alleges, however, that he did so in the good faith belief that Ms. Rambo required drug rehabilitation – and that the People were not prejudiced by his order.

In fact, when the parties appeared in Department 5 on August 3, 1993, Judge Brenner ordered the sentence of April 14, 1993 vacated and set aside, resentenced the defendant to one year in Orange County Jail (with credit for time served of 111 days), *and authorized Rambo's release to a representative of the Recovery Center, with day for day credit.*

Judge Cardenas alleges that, consistent with his habit and custom, he would not have ordered Ms. Rambo's release unless he was satisfied there was good reason to do so. Judge Cardenas may have sought the advice of his staff D.A. as he generally did, which would not be in a transcript. Further, the fact there was an *in camera* hearing on bail before another judge suggests this defendant was cooperating with the police. Finally, almost six years have passed between these events and the Commission's accusation. During that time, Judge Cardenas handled thousands of criminal cases, the details of most of which have become all but impossible to recall.

2. Brian Robert Carson

Judge Cardenas is informed and believes Basinger appeared as attorney of record for Mr. Carson on April 15, 1994, and that Mr. Carson was in custody charged with narcotics offenses (93HF0840). The case was assigned to Judge Anthony Rackauckas. Judge Cardenas is informed and believes Kelley's motion to reduce bail was denied by Judge Rackauckas on May 20, 1994, and bail was fixed at \$100,000 (with trial set for August 8, 1994, before Judge Rackauckas). Judge Cardenas does not remember whether he was told any of this by Kelley when she later called him to request a bail reduction.

Judge Cardenas alleges he received a phone call from the defendant's parole officer, who recommended bail of \$10,000 and said he was going to lift the parole hold on Mr. Carson. After verifying the parole agent's identification, Judge Cardenas did as he was asked: he contacted Detention/Release on June 19, 1994, and ordered bail reduced from \$100,000 to \$10,000 *in the event the parole hold was lifted.* Judge Cardenas alleges that the bail reduction order would have been worthless otherwise: it would be pointless

for a judge to reduce bail, *if a defendant is being held by parole authorities anyway*. There is no bail on parole, so the parole officer truly controls the defendant's freedom.

Generally speaking, a parole agent, as a law enforcement officer, does not recommend a bail reduction or O.R. release without a very good reason; in fact, usually parole officers are trying to keep parolees in custody rather than get them out. As someone who is both pro-prosecution and substantially more familiar with the defendant than anyone else in the "system," the parole officer's judgment about the parolee in question would have carried great weight with Judge Cardenas.

Judge Cardenas alleges he would not have reduced bail from the substantial amount of \$100,000 to a lesser figure of \$10,000 had he not been told by Kelley and Mr. Carson's parole officer that the parole hold on Mr. Carson either had been or would soon be lifted. Judge Cardenas is informed and believes Mr. Carson made all court appearances. In November of 1994, charges against Mr. Carson were dismissed by the attorney's office.

3. Efraim Vargas

This is an extremely unfortunate case in which Judge Cardenas admits to having made an error in judgment. Mr. Vargas had been held to answer on seven counts of insurance fraud and grand theft (case no. 94CF0975), with bail set at \$100,000. On June 10, 1994, Mr. Vargas and his attorney Roland Rubalcava appeared before Judge Kathleen O'Leary, to whom the case was assigned. Judge Cardenas does not have sufficient information to be able to admit or deny whether bail was discussed in chambers with Judge O'Leary declining to reduce the bail.

On June 12, 1994, Kelley made an attorney visit to Mr. Vargas at the Orange County Jail. On the evening of June 23, 1994, Basinger called Judge Cardenas at home and requested that he order Mr. Vargas released on his own recognizance. Basinger told Judge Cardenas he had been retained by family members to represent Vargas, who was being held in the Orange County Jail in lieu of \$100,000. Judge Cardenas believed

Basinger was Vargas's lawyer and had no idea Mr. Rubalcalva was the attorney of record. Basinger requested Mr. Vargas be released O.R. pending trial on August 8, 1994, because information from family members indicated he was willing to cooperate with law enforcement, weighed nearly 500 pounds, and was suffering from high blood pressure, swelling of his lower legs, shortness of breath and blood in his urine. Mr. Basinger also told Judge Cardenas that the jail medical team was unable to assist him, and he might die without immediate medical attention.

Judge Cardenas did call Detention/Release to get as much information as he could, and also attempted to call a member of the jail medical team. Respondent was able to determine that Mr. Vargas had no record, and no crimes of violence were alleged. Having been told the defendant's family was going to take him to a hospital, Judge Cardenas ordered Mr. Vargas released on O.R. Mr. Vargas fled the jurisdiction of the court and prevented the People from having a trial on the merits.

On June 29, 1994, Deputy District Attorney William Overtom filed a Notice of Bail Review. The Notice stated, "Said review will be based upon the misrepresentation of material facts and omission of material facts necessary to make facts stated in an ex parte communication to the Honorable Luis A. Cardenas true, causing said Judge to release defendant on his own recognizance."

On June 29, 1994, Deputy District Attorney Pete Huelsenbeck (the deputy in charge of the major fraud unit) called Judge Cardenas to ask about the Vargas matter. Judge Cardenas explained that he had received a phone call from Basinger in which the latter described an emergency illness. Later that day, Deputy District Attorney Huelsenbeck told Judge Cardenas gross misrepresentations had been made to him – and asked Judge Cardenas to hold a hearing regarding bail. Judge Cardenas recommended the trial judge handle it. When Basinger "later" called, Mr. Huelsenbeck told him they were going to court at 9 a.m. the next day on June 30, 1994, to have Judge O'Leary hear the matter.

Judge Cardenas never declined to hold a bail hearing at the request of the deputy district attorney and in fact said he would do whatever he could, to remedy the situation. He did say he would defer to Judge O'Leary and take whatever action she recommended. The deputy district attorney asked for Judge Cardenas' cooperation and sent two investigators to talk to him. Judge Cardenas described the incident at length. Moreover, when asked by the investigators to sign a declaration relating what had happened, he did so.

Hearings were held before Judge O'Leary on June 30, 1994 (Judge O'Leary revoked the O.R. release) and July 8, 1994 (when she increased bail to \$1,000,000). During the hearing on June 30, 1994, Deputy District Attorney Ken Chinn referred not to any misconduct by Judge Cardenas, but to Basinger's material misrepresentations to Cardenas and the "fraud on the system" perpetrated by Basinger.

When Judge Cardenas learned the defendant had absconded, he was upset and called both the deputy district attorney assigned to the case and Judge O'Leary to apologize, and explain what information had been given to him. With hindsight, Judge Cardenas acknowledges he made a mistake releasing this man. At the time, Judge Cardenas believed he was doing the right thing in relying on the information given to him by Basinger that seemed to establish a true medical emergency.

4. Daniel Mitsu Okinaka

Judge Cardenas is informed and believes Mr. Okinaka was arrested for a violation of Penal Code section 245(a)(1) (assault with a deadly weapon, case no. 95NM11675B); the "deadly weapon" in question were the defendant's hands and feet. At arraignment on December 11, 1995, Judge Martin Hairabedian, Jr., set bail at \$15,000 and appointed the public defender. Based upon a request by Basinger, Judge Cardenas contacted Detention/Release on December 7, 1995, and ordered Okinaka released on O.R. On January 3, 1996, Okinaka entered a plea of guilty to misdemeanor assault and battery. Judge Cardenas alleges that, *consistent with his custom and habit*, he asked

Detention/Release to investigate, and ordered the O.R. based on the information received.

5. Jorge Alvarez

The Notice alleges that Mr. Alvarez was in custody charged with two violations of Penal Code section 273.5 (case no. WEW95WF2450). This is incorrect. Judge Cardenas is informed and believes Mr. Alvarez was in fact charged with one violation of Penal Code section 273.5 in case no. WEW95WF2450 – but had a prior conviction for violation of section 273.5, also in West Court (case no. 94W09533; representing himself, Mr. Alvarez entered a plea of guilty)

Mr. Alvarez was arraigned in Orange County Municipal Court, West Judicial District (“West Court”) on December 22, 1995, and bail was at \$25,000 in case no, WEW95WF2450. Bail seems to have been set at \$10,000 in the probation violation case. It thus appears that the total bail for the case involving the Penal Code section 273.5 allegation and the probation violation case was \$35,000.

Basinger approached Judge Cardenas, informed him that he had been retained to represent Mr. Alvarez, and requested that Judge Cardenas release Mr. Alvarez on O.R. Judge Cardenas contacted Detention/Release on January 4, 1996, denied the O.R. request, and ordered that Mr. Alvarez’s bail be reduced to \$5,000 on both cases. Basinger substituted into the case as attorney for Mr. Alvarez on January 8, 1996. The preliminary hearing was held February 23, 1996, at the conclusion of which Alvarez was held to answer. In the Commitment and Condition of Release form, Commissioner Martin Engquist stated that the bail amount of \$5,000 was sufficient and would remain.

Judge Cardenas alleges that his conduct was entirely proper. This matter involved two West Court cases: a pending felony, and a probation violation in what appears to have been a misdemeanor case. At the time, Judge Cardenas was the only Superior Court judge sitting in West Court. He had *two* calendars: (1) his own, involving some 40 to 60 pending felony cases; and (2) a pre-preliminary hearing settlement calendar.

With respect to the second sort of calendar, all lawyers with pending felonies in

West Court tried to resolve them with Judge Cardenas before preliminary hearing. In addition to the District Attorney assigned to Department 73, who was always present during bail discussions, the West Court Detention/Release officer typically participated in the discussions, too – either in chambers or by telephone.

When bail requests in felony cases came to him, Judge Cardenas made decisions quickly after informal discussions with all parties – and often with no record of the discussions. Inasmuch as Judge Cardenas is alleged to have ordered the bail reduction on a working day, his staff D.A. would have been present to offer any input he or she had on the matter. Furthermore, the West Orange County Detention/Release officer would have been asked to investigate.

In domestic violence cases, Judge Cardenas made it his practice to learn as much information about the victim's wishes as possible. To do so, Judge Cardenas either contacted the police or talked to victims in his chambers (with the consent of counsel). Any discussions in chambers with the victim were usually attended by both a court reporter transcribing the discussion and his court clerk (the latter to put any female victims at ease in what would otherwise be an intimidating atmosphere).

Judge Cardenas has no independent recollection of Mr. Alvarez's case. Apparently, contact was made with the victim, which is consistent with Judge Cardenas's habit and custom (to talk to the victim, if possible). After investigation, Judge Cardenas *denied* Basinger's request for an O.R. release. Rather, bail was reduced. To Judge Cardenas' knowledge, Mr. Alvarez made all his appearances without incident.

6. Jana Adkins

On January 17, 1996, Ms. Adkins was remanded to the custody of the Orange County Sheriff for failure to appear and failure to pay fines in connection with case no. 95C506343. Stating she had retained Basinger as her attorney, Ms. Adkins moved for an O.R. release. Judge James Stotler denied her request, and bail was set (apparently at \$500). On January 18, 1998, based upon a request by Basinger, Judge Cardenas

contacted Detention/Release and ordered that Ms. Adkins be released on O.R. On January 23, 1996, Adkins appeared *without counsel*, and entered a plea of guilty.

On traffic "failures to appear," it was Judge Cardenas' habit and custom to release a defendant on O.R. if he or she retained a lawyer who promised to clear up the violation. This is a routine practice among the judges in Orange County, as the investment in a lawyer on a traffic ticket indicates commitment to resolve the matter. The O.R. would not be granted until a background check was completed by Detention/Release.

D. MODIFICATIONS OF PROBATION

Judge Cardenas is alleged to have modified conditions of probation in two cases, in violation of Penal Code section 1203.3(b). He generally denies the allegation his conduct violated the Code of Judicial Ethics (in effect since January 15, 1996), canons 1, 2, 2A, 2B(1), 2B(2), 3B(2), 3B(7), and 3E.

1. James Willam Warner

Like the Vargas matter, this is an extremely unfortunate case in which Judge Cardenas admits to having made an error in judgment – in large part because he did not know all the facts. Judge Cardenas is informed and believes that Mr. Warner pleaded guilty to possession for sale of a controlled substance, and an enhancement pursuant to Penal Code section 12022.1 (commission of felony while released on bail or own recognizance, case numbers 93CF2517 and 96CF0408) on February 20, 1996. He was represented in that proceeding by Kelley. Judge Daniel Didier sentenced Warner to a four-year suspended prison sentence, with Warner to be confined for 365 days in the Orange County Jail and to be on felony probation for three years.

Although Kelley had previously represented the defendant, Basinger approached Judge Cardenas between February 20 and February 27, 1996, to ask for an O.R. release for Mr. Warner. Upon being told the defendant was in a grave medical condition requiring a full body cast that required alternative housing (more specifically, a non-jail setting), Judge Cardenas informed Basinger that he needed detailed medical records to

support such a request. In addition to a full doctor's report to verify the medical condition, Judge Cardenas required a personal appearance by the defendant.

Basinger provided (a) a letter a letter from Dr. Fernando A. Ravessoud, M.D., attesting to Mr. Warner's serious back injuries; and (b) Mr. Warner's medical records, reflecting the fact he had suffered a back injury for which he had undergone surgery (resulting in the full body cast). When Mr. Warner appeared in open court, Judge Cardenas saw the full body cast himself.

Because Judge Cardenas was staffed daily with a deputy district attorney, that office would have been represented when the discussions about Mr. Warner's case occurred. There would probably be no record of the discussion, because such matters were routinely done in chambers. On February 27, 1996, Judge Cardenas issued an order modifying the conditions of Mr. Warner's probation. Having "read and reviewed the attached Exhibits (Physician's Letter and medical records)," Judge Cardenas ordered the Sheriff of Orange County to release Mr. Warner from custody on March 1, 1996. The sentence was "modified to credit time served as of March 1, 1996," and Mr. Warner was ordered to report to and complete a residential drug rehabilitation program in Imperial County. (It is common in courts in Orange County to give qualifying defendants in a non-jail facility day-for-day credit against their sentence.) Upon completion of the program, the defendant was ordered to report to the Orange County Probation Department within 72 hours.

On April 26, 1996, Judge Cardenas issued a minute order stating that the terms of probation were modified as follows: "Based on information related to the Court that: 1) defendant is establishing residency in Oregon and 2) defendant is in full body cast due to illness, Court modifies previous conditions of probation. Probation Department relieved of supervision. All other terms and conditions to remain in full force and effect. Defendant to show proof of completion (by Mail) of drug rehabilitation program by 9-6-96." Judge Cardenas therefore denies the allegation that his February 27, 1996 order

relieved the probation department of supervision; in fact, it was the April 26, 1996 order that did so.

Based on documents provided by the Commission in discovery, Judge Cardenas now knows that Mr. Warner pleaded guilty and was sentenced by Judge Didier. He also now knows, though he does not believe he knew at the time of his orders, that Judge Didier *had considered the very same medical information in imposing sentence*. Letters from Dr. Ravessoud and Mr. Warner's medical records were *sealed* in Mr. Warner's file, and were unsealed only for the purposes of the Commission's investigation of Judge Cardenas.

The formerly sealed portions of the file reveal that Judge Didier considered in his sentencing decision a letter from Dr. Paul Blair to Ginger Kelley, stating that in view of the defendant's serious back injury, "the most optimal course of action would be to allow the patient to serve his time at the Orange County Jail so that he may continue with his previously established medical and psychiatric treatments teams" (as transferring his care to a new system would be deleterious).

The newly unsealed portion of the file also contains a letter from Dr. Ravessoud to Judge Didier, which begins: "Please consider Mr. Warner as having a compromised spine and at high risk for injury in the State Prison System." And it also says, "I understand now [Warner] is asking to be considered for county jail facility confinement that would permit his ability to continue under medical care." In addition, an earlier letter from Dr. Ravessoud and Mr. Warner's medical records are included in the file.

With hindsight, Judge Cardenas recognizes he acted without benefit of all the facts. Looking back, he realizes he should have carefully examined the court file, discovered the prior orders by Judge Didier, and sent the matter back to Judge Didier so he could order the alternative housing if he felt it was appropriate. Judge Cardenas nonetheless tried, under the constraints of a busy double calendar, to handle the matter as competently as possible in light of the verified serious medical condition of the defendant.

2. Christine Higgins

Judge Cardenas denies the allegation that Ms. Higgins entered a guilty plea to possession for sale of a controlled substance (case no. 95CF1019), and admitted she was in violation of her probation (in case no. 93CF2679) *on March 29, 1996*. Judge Cardenas is informed and believes Ms. Higgins entered a guilty plea and admitted a probation violation on *September 1, 1995*. On that date, Judge William Bedsworth suspended imposition of sentence and placed Ms. Higgins on three years probation.

Kelley approached Judge Cardenas and requested that he order the probation department relieved of supervision in the case because of an impending move or visit to France. Judge Cardenas followed his normal procedure. He contacted the probation department and asked it to verify the defendant's residence in France. The probation office did so and indicated it had no objection to "staying" supervised probation while she remained out of the country. (Judge Cardenas always orders probationers to report to their probation officers within 72 hours if they return to the United States.)

Judge Cardenas issued a minute order on March 29, 1996, granting the defendant's motion to modify probation and relieving Ms. Higgins of supervised probation based on the representation she had a "verified new address in France." The minute order states that the defendant's motion was "granted with the probation officer's consent." Ms. Higgins' terms and conditions of probation remained in full force and effect except she would not be actively supervised. When Ms. Higgins returned to the country, Judge Carter ordered her supervision reinstated.

D.A. Investigators Jerry Hodges and Mike Major interviewed John Bowater, Director of the Orange County Probation Department, on November 22, 1996. Mr. Bowater informed them that Ms. Higgins' "probation decrease [was] only slightly unusual and certainly not anything that drew a red flag from the office. He said usually this type of modification is not accommodated simply because there is no follow up after the probationer is placed on a decreased status." Mr. Bowater also said he "personally

reviewed" Ms. Higgins' probation file and spoke with the assigned probation officer, Allen Gover. Mr. Gover said that he spoke personally with West Court Probation Officer Scott Moore, regarding Ms. Higgin's status and Judge Cardenas's inquiry as to whether an informal probation status modification would be acceptable. *Mr. Gover said he was considering putting Ms. Higgins on an informal status before Judge Cardenas' inquiry, and did not object.* In addition, Mr. Gover said there was no pressure placed on him by anyone to agree to the modification.

On felony cases in superior court at the time (and to the present day), probation modifications were not heard by the trial judge but by the criminal master calendar judge, usually in Department 5. A request for probation modification like this one is generally considered a duty matter that will draw a low priority on a "monster calendar" like Department 5 was at the time. An attorney with heavy appearances in West Court (which Basinger and Kelley had) might well ask the calendar judge there to handle the matter as a convenience along with their other cases that day, rather than travel to Santa Ana and wait all morning (and possibly all afternoon) for a chance to speak with Judge Carter. There is nothing improper about Judge Cardenas, who ran a criminal calendar in West Court at the time, having done the modification, which was at most a housekeeping matter. Notably, the probation department saw nothing irregular in Judge Cardenas's handling the case and voiced no objection.

In short, it does not appear Judge Cardenas did anything improper by acquiescing to a defendant's request -- joined in by her probation officer -- for the probation department to be relieved of supervision while she lived abroad. It is irrelevant that he was not the sentencing judge.

COUNT TWO

Judge Cardenas generally denies the allegation that the charged conduct violated the Code of Judicial Conduct (in effect until January 15, 1996), canons 1, 2, 2A, 2B,

3B(2), and 3B(7). Upon information and belief, Judge Cardenas admits that defendant Douglas Mark Thurber was ordered to complete an SB-38 drinking driver program; he does not have sufficient information to know whether Mr. Thurber was ordered to do so in conjunction with case no C77059 or case no. 89C500384. On November 10, 1993, attorney Paul Stark (representing Mr. Thurber) submitted to Judge Cardenas an "ex parte application for judicial finding of completion of the SB-38 program."

According to the application, the defendant entered a plea to a violation of Vehicle Code section 23152(a) with priors - and also stated that the docket in this matter was attached. Further, the application stated that Mr. Thurber had been ordered as a term and condition of probation to attend the SB38 program, and that Mr. Thurber had indeed completed probation with no violation due to non-completion of the SB38 program. Mr. Stark then stated, upon information and belief, that the defendant's failure to complete the SB38 program would have been reported to the court. In the absence of any such report, the defendant asked Judge Cardenas to make a judicial finding he completed the program.

Mr. Stark attached a declaration in which he stated the defendant told him he completed the SB38 program, but the school he attended was defunct. Thus the DMV had no proof he completed the program, and the defendant was unable to get a valid California driver's license because of that lack of proof. Judge Cardenas signed an order on November 10, 1993, directed to the DMV. In that order, Judge Cardenas made a judicial finding that Mr. Thurber had completed the SB-38 program as a condition of probation in case number C-77059. Subsequently, on April 4, 1994, Judge Cardenas issued an order to "Jerry Pauley, Director of School 10," making a judicial finding that Thurber had completed the SB38 18 month-Multiple Defender Program, in order to receive the DL101, as a condition of probation in case number C-77059).

By letter dated April 14, 1994, the Executive Director of School Ten wrote Judge Cardenas that School Ten could not issue a Department of Motor Vehicles DL 101 form verifying Mr. Thurber's completion of the SB-38 program, because Mr. Thurber had

never enrolled in the program. In fact, the Executive Director enclosed a copy of a notarized statement (also dated April 14, 1994) provided to Stark attesting to these facts and a copy of a document sent to Central Municipal Court (dated January 2, 1990), verifying Thurber's failure to enroll in the program (in connection with case no. 89C500384). Judge Cardenas directed that the letter be filed, which was done filed June 6, 1994.

Judge Cardenas denies both the allegation that he issued the orders without notice to the district attorney *and* the allegation he took "no further action in the matter" after directing the April 14, 1994 letter be placed in the file. In the first place, Mr. Stark discussed this matter in the presence of the deputy district attorney assigned to Department 73; the latter expressed no interest in the case and essentially stated that the People did not oppose the motion.

In the second place, Judge Cardenas told Mr. Thurber after receiving this letter that *he could do nothing precisely because School Ten disputed the facts*. Judge Cardenas also told Mr. Thurber nothing further could be done *unless he filed a motion or petition requiring an order to show cause hearing at which evidence could be taken*. When Mr. Thurber filed such a petition, *Judge Cardenas recused himself because he believed he could be a witness in any such proceeding*. *Judge Cardenas then assigned the case to Department 5 and Judge Carter*.

There was nothing improper in this. It would have been improper had Judge Cardenas held the order to show cause hearing, knowing he could be called as a witness. *It would also have been improper if Judge Cardenas had rescinded or revoked his order, as the Commission apparently suggests he should have done*. *In the absence of any evidentiary hearing involving witness testimony under penalty of perjury, he was not in a position to find that the letter from School Ten set forth true facts*. Holding an order to show cause hearing in the face of a perceived conflict, or revoking an order without such a hearing, might have constituted misconduct on Judge Cardenas's part. The facts alleged

by the Commission in this count do not.

UNCHARGED CONDUCT GOING TO DISCIPLINE

The Commission has placed Judge Cardenas on notice that additional allegations, concerning conduct while he was sitting on assignment after retirement from judicial office, will be at issue in the formal proceedings. Judge Cardenas denies that his conduct in the four listed cases reflects any pattern of misconduct. He further alleges he had been assured that, sitting on assignment, he retained all the powers of any judge independent of the nature of his assignment. In fact, judges hearing civil matters *regularly* issue search and arrest warrants in criminal matters, and hear bail and O.R. requests.

Furthermore, it was not unusual for attorneys to request that Judge Cardenas follow up on complicated or idiosyncratic criminal cases he had handled in the past, or those where he was familiar with a defendant's special needs, and so it was relatively common for his court to have criminal as well as civil case files in the courtroom. Likewise, police officers continued to ask for his help with search warrants, without regard to whether he was the on-call magistrate that week.

1. Salome Aguilar

Judge Cardenas is informed and believes Mr. Aguilar was charged with two counts of transportation of a controlled substance in case no. 96CF1236. He does not have sufficient information to be able to admit or deny that Mr. Aguilar was arraigned before Judge Crandall on April 30, 1996. Judge Cardenas is informed and believes Ed Eisler of the Alternate Defender's Office was appointed to represent Mr. Aguilar. Judge Cardenas does not have sufficient information to be able to admit or deny that Judge Crandall set bail, or that bail was set at \$10,000. Judge Cardenas admits that Basinger called him to request an O.R. release

Judge Cardenas called Detention/Release, but does not have sufficient information to be able to admit or deny that the telephone call occurred on May 2, 1996. Judge

Cardenas followed his usual procedure, and after talking to Detention/Release agreed that an O.R. would not be appropriate. When Detention/Release suggested a minimum of \$5,000 bail, Judge Cardenas concurred. He thus denied an O.R. release and reset bail at \$5,000. Judge Cardenas denies that he was told by Detention/Release that Mr. Aguilar was ineligible for O.R. release "because he had been in the country for only a brief time." The time a defendant has spent in this country does not determine eligibility for an O.R.; it is, rather, a factor to consider in deciding the appropriateness of an O.R. release. In this case it was not appropriate, and Judge Cardenas did not order one. There was no impropriety in the handling of Mr. Aguilar's bail reduction.

2. Hung Quoc Do

Judge Cardenas lacks sufficient information to be able to admit or deny that Mr. Do was charged with two counts of unlawful possession of a firearm by a felony in case no. 96CF1700 on June 14, 1996. He also lacks sufficient information to be able to admit or deny that a warrant was issued for Mr. Do's arrest by Judge Marjorie Laird Carter, or that bail was set at \$100,000.

In this case, Judge Cardenas received a phone message to call Mr. Do's parole officer about this defendant. When Judge Cardenas did so, the parole officer (Abel Gonzalez) asked him to set bail at \$25,000 and order the defendant to surrender to him at his parole office for *return to state prison*. It was Judge Cardenas' impression that the defendant was working with the authorities on an undercover investigation. At the request of Kelcy and Mr. Gonzalez, Judge Cardenas recalled the warrant and reduced bail to \$25,000 on or about August 13, 1996.

As in the case of Mr. Carson, above, Judge Cardenas was confident that the parole officer, an agent of law enforcement, would not recommend the bail reduction without good reason. In fact, usually parole officers are trying to keep parolees in custody rather than get them out. As someone who is both pro-prosecution and substantially more familiar with the defendant than anyone else in the "system," the parole officer's

judgment about the parolee in question would have carried great weight with Judge Cardenas. There was nothing improper about the bail reduction.

3. Theodore Lewis Berner

Judge Cardenas is informed and believes Mr. Berner was arrested for violation of Vehicle Code section 23152(a), in case no. 96HM06204 on August 27, 1996. On August 27, 1996, at the request of Basinger, Judge Cardenas contacted Detention/Release and obtained as much information as possible about the defendant. Based on this information, he ordered that Mr. Berner be released on O.R. Mr. Berner, represented by Basinger, entered a guilty plea on December 19, 1996. This was evidently a pre-arraignment O.R. case in which Judge Cardenas followed his normal habit and custom by calling Detention/Release and getting a complete background check on the defendant. There is nothing about this misdemeanor case that sets it apart from hundreds of others handled in the same fashion. Detention/Release was contacted and based on its investigation and recommendation an O.R. was granted. Mr. Berner appeared and resolved his case in a timely fashion. There was no impropriety in the handling of this matter.

4. Jim Steenbergen

Judge Cardenas admits that Deputy Public Defender Holly Zebari left a message on his phone answering service, informing him that her cousin had been arrested and was being held in custody on a \$15,000 traffic warrant issued by a Long Beach Municipal Court judge. He does not have sufficient information to be able to admit or deny that he received the message on October 23, 1996.

As noted above, Deputy Public Defender Holly Zebari is the sister of Judge Cardenas' wife – a fact disclosed to all parties appearing in his courtroom. Further, it is common knowledge throughout the county that Ms. Zebari is Judge Cardenas' sister-in-law. When she asked Judge Cardenas to contact Detention/Release, he did so and learned that Mr. Steenbergen had traffic warrants and a clean record. Judge Cardenas called Ms. Zebari back, and she said she would personally make sure the matters were resolved.

Judge Cardenas called the Detention/Release officers again and asked if they thought Steenbergen was a good O.R. risk. They replied that he was, as this was only a traffic offense. He was released and cleared up the warrants immediately. Judge Cardenas is informed and believes the Detention/Release Investigative Report itself states that Mr. Steenbergen was represented by Holly Zebari, described as "Judge's sister-in-law." It also states that Cardenas "ordered O/R unless the charges are serious."

During more than fifteen years of marriage, Judge Cardenas may have met Mr. Steenbergen once or twice. In fact, Judge Cardenas would not know Mr. Steenbergen if he walked up to him. Judge Cardenas never intended to do any favor for him that he would not do for other arrested individuals. With hindsight, Judge Cardenas understands that others would see it differently. Given the appearance of impropriety, Judge Cardenas would not handle the matter if he had to do it over again. At the time, however, he thought of it only as routine and insignificant.

CONCLUSION

Judge Luis Cardenas, one of the most respected judges in the history of Orange County, was a criminal master calendar judge both in Santa Ana and Westminster in the 1980s and 1990s. He was especially valued in that capacity *by all parties and by all the judges of the court* because he could handle an enormous volume of cases with intelligence, good judgment, patience, courtesy and speed. To do so he was forced to dispense with many of the formalities that, had they been observed, would have insulated him from the Accusation he faces now.

Judge Cardenas came to rely on the honest representations made every day by attorneys who appeared in his court, who except in rare instances behaved honorably and honestly. In return, Judge Cardenas made himself available to lawyers and police officers virtually at all hours to review bail matters and search warrants, whether or not he was officially on call. In the climate that prevailed at the beginning and throughout Judge

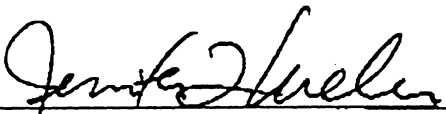
Cardenas's career, this willingness to help out was appreciated and applauded.

Of the tens of thousands of criminal cases Judge Cardenas handled in his career, the Commission has focused on these twenty-five. It is difficult for Judge Cardenas to defend himself now, as the sheer numbers of cases he processed and the passage of time since some of these matters were in his court render it all but impossible to recall each one's details. (In fact, the Commission, with the luxury of hindsight, years to pore over documents, and multiple witness interviews, has itself made some substantial errors in the Accusation.) He does not claim to be a perfect judge or one who has never made mistakes. In fact, he has admitted some of those mistakes in this Answer.

On the other hand, as legions of prosecutors, defense attorneys and judges will attest, Judge Cardenas was always regarded as one of the best, most diligent, decent, and beloved judges in Orange County history. Because of his efforts and willingness to dispense with "red tape," both public safety and fiscal responsibility were enhanced in our courts. He hopes the Commission will consider the entirety of his service to the legal community before making its decision.

DATED: June 7, 1999

Respectfully submitted,


JENNIFER L. KELLER
Attorney for Respondent
FORMER JUDGE LUIS A. CARDENAS (Ret.)

VERIFICATION

STATE OF CALIFORNIA)

)

ss.

COUNTY OF ORANGE)

I, Jennifer L. Keller, declare:

I am the Respondent Judge in these proceedings. I certify and declare that I have read the foregoing Answer and know its contents. The matters stated in the document described above are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

Executed on June 7th, 1999, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



JUDGE LUIS A. CARDENAS (Ret.)

**PROOF OF SERVICE
§1013A(3) C.C.P.**

STATE OF CALIFORNIA COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 5160 Campus Drive, Newport Beach, California 92660.

On June 7, 1999, I served the foregoing document described as VERIFIED ANSWER on all parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

JACK COYLE
WILLIAM SMITH
Office of Trial Counsel
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14424
San Francisco, CA 94102

☒ **BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on the same day with postage thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE:** I caused to be delivered such envelope by hand.

Executed on June 7, 1999, at Newport Beach, California.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (FEDERAL) I declare that the service was made at the direction of a member of the bar of this court.



Kathcrine Coates

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Jennifer L. Keller
Certified Specialist in
Criminal Law
California State Bar,

Board of Legal Specialization

FACSIMILE TRANSMITTAL COVER PAGE

TO: Richard Schickele
Commission on Judicial Performance
Counsel's Office
455 Golden Gate Avenue, Suite 14424
San Francisco, CA 94102-3660

RECEIVED

JUN 07 1999

COMMISSION ON
JUDICIAL PERFORMANCE

FAX NUMBER: 415-557-1160

DATE: June 7, 1999

FROM: Jennifer Keller

FAX NUMBER: 949-474-9202 [temporary]

RE: Verified Answer to Notice of Proceedings in Inquiry Concerning
Former Judge Luis Cardenas, No. 155

Number of pages including cover page: 44

The information contained in this communication is confidential, may be attorney/client privileged, may constitute inside information and is intended only for the use of the addressee. Unauthorized use, disclosure or copying is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately call (949) 476-8700. In the event of missing pages or unreadable copy, please call (949) 476-8700. If this number is not operating, please immediately call (949) 474-9201.

Message: The original is being sent via Federal Express, and should arrive there tomorrow (June 8, 1999).